

By the Committees on Comprehensive Planning; Regulated Industries; and Senator Atwater

316-2623-04

1 A bill to be entitled
2 An act relating to homeowners' associations;
3 amending s. 720.301, F.S.; defining the terms
4 "department," "division," and "member";
5 amending s. 720.302, F.S.; prescribing a
6 legislative purpose of providing alternative
7 dispute resolution procedures for disputes
8 involving elections and recalls; providing acts
9 that constitute crimes; providing penalties;
10 amending s. 720.303, F.S.; prescribing the
11 right of an association to enforce deed
12 restrictions; prescribing rights of members and
13 parcel owners to attend and address association
14 board meetings and to have items placed on an
15 agenda; prescribing additional requirements for
16 notice of meetings; providing for additional
17 materials to be maintained as records;
18 providing additional requirements and
19 limitations with respect to inspecting and
20 copying records; providing requirements with
21 respect to financial statements; providing
22 procedures for recall of directors; amending s.
23 720.304, F.S.; prescribing owners' rights with
24 respect to flag display; prohibiting certain
25 lawsuits against parcel owners; providing
26 penalties; allowing a parcel owner to construct
27 a ramp for a parcel resident who has a medical
28 need for a ramp; providing conditions; allowing
29 the display of a security-services sign;
30 amending s. 720.305, F.S.; providing that a
31 fine by an association cannot become a lien

1 against a parcel; providing for attorney's fees
2 in actions to recover fines; creating s.
3 720.3055, F.S.; prescribing requirements for
4 contracts for products and services; amending
5 s. 720.306, F.S.; providing for notice of and
6 right to speak at member meetings; requiring
7 election disputes between a member and an
8 association to be submitted to mandatory
9 binding arbitration; amending s. 720.311, F.S.;
10 expanding requirements and guidelines with
11 respect to alternative dispute resolution;
12 providing requirements for mediation and
13 arbitration; providing for training and
14 education programs; transferring, renumbering,
15 and amending s. 689.26, F.S.; modifying the
16 disclosure form that a prospective purchaser
17 must receive before a contract for sale;
18 providing that certain contracts are voidable
19 for a specified period; requiring that a
20 purchaser provide written notice of
21 cancellation; transferring and renumbering s.
22 689.265, F.S., relating to required financial
23 reports of certain residential subdivision
24 developers; amending s. 498.025, F.S., relating
25 to the disposition of subdivided lands;
26 conforming cross-references; creating s.
27 720.402, F.S.; providing remedies for
28 publication of false and misleading
29 information; amending s. 34.01, F.S.; providing
30 jurisdiction of disputes involving homeowners'
31 associations; amending ss. 316.00825, 558.002,

1 F.S.; conforming cross-references; providing
2 for internal organization of ch. 720, F.S.;
3 providing an effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Section 720.301, Florida Statutes, is
8 amended to read:

9 720.301 Definitions.--As used in ss. 720.301-720.501
10 ~~ss. 720.301-720.312~~, the term:

11 (1) "Assessment" or "amenity fee" means a sum or sums
12 of money payable to the association, to the developer or other
13 owner of common areas, or to recreational facilities and other
14 properties serving the parcels by the owners of one or more
15 parcels as authorized in the governing documents, which if not
16 paid by the owner of a parcel, can result in a lien against
17 the parcel.

18 (2) "Common area" means all real property within a
19 community which is owned or leased by an association or
20 dedicated for use or maintenance by the association or its
21 members, including, regardless of whether title has been
22 conveyed to the association:

23 (a) Real property the use of which is dedicated to the
24 association or its members by a recorded plat; or

25 (b) Real property committed by a declaration of
26 covenants to be leased or conveyed to the association.

27 (3) "Community" means the real property that is or
28 will be subject to a declaration of covenants which is
29 recorded in the county where the property is located. The
30 term "community" includes all real property, including
31 undeveloped phases, that is or was the subject of a

1 development-of-regional-impact development order, together
2 with any approved modification thereto.

3 (4) "Declaration of covenants," or "declaration,"
4 means a recorded written instrument in the nature of covenants
5 running with the land which subjects the land comprising the
6 community to the jurisdiction and control of an association or
7 associations in which the owners of the parcels, or their
8 association representatives, must be members.

9 (5) "Department" means the Department of Business and
10 Professional Regulation.

11 ~~(6)(5)~~ "Developer" means a person or entity that:

12 (a) Creates the community served by the association;
13 or

14 (b) Succeeds to the rights and liabilities of the
15 person or entity that created the community served by the
16 association, provided that such is evidenced in writing.

17 (7) "Division" means the Division of Florida Land
18 Sales, Condominiums, and Mobile Homes in the Department of
19 Business and Professional Regulation.

20 ~~(8)(6)~~ "Governing documents" means:

21 (a) The recorded declaration of covenants for a
22 community, and all duly adopted and recorded amendments,
23 supplements, and recorded exhibits thereto; and

24 (b) The articles of incorporation and bylaws of the
25 homeowners' association, and any duly adopted amendments
26 thereto.

27 ~~(9)(7)~~ "Homeowners' association" or "association"
28 means a Florida corporation responsible for the operation of a
29 community or a mobile home subdivision in which the voting
30 membership is made up of parcel owners or their agents, or a
31 combination thereof, and in which membership is a mandatory

1 condition of parcel ownership, and which is authorized to
2 impose assessments that, if unpaid, may become a lien on the
3 parcel. The term "homeowners' association" does not include a
4 community development district or other similar special taxing
5 district created pursuant to statute.

6 ~~(10)(8)~~ "Member" means a member of an association, and
7 may include, but is not limited to, a parcel owner or an
8 association representing parcel owners or a combination
9 thereof, and shall include any person or entity obligated by
10 the governing documents to pay an assessment or amenity fee.

11 ~~(11)(9)~~ "Parcel" means a platted or unplatted lot,
12 tract, unit, or other subdivision of real property within a
13 community, as described in the declaration:

14 (a) Which is capable of separate conveyance; and

15 (b) Of which the parcel owner, or an association in

16 which the parcel owner must be a member, is obligated:

17 1. By the governing documents to be a member of an

18 association that serves the community; and

19 2. To pay to the homeowners' association assessments

20 that, if not paid, may result in a lien.

21 ~~(12)(10)~~ "Parcel owner" means the record owner of
22 legal title to a parcel.

23 ~~(13)(11)~~ "Voting interest" means the voting rights
24 distributed to the members of the homeowners' association,
25 pursuant to the governing documents.

26 Section 2. Subsection (2) of section 720.302, Florida
27 Statutes, is amended to read:

28 720.302 Purposes, scope, and application.--

29 (2) The Legislature recognizes that it is not in the
30 best interest of homeowners' associations or the individual
31 association members thereof to create or impose a bureau or

1 other agency of state government to regulate the affairs of
2 homeowners' associations. However, in accordance with s.
3 720.311, the Legislature finds that homeowners' associations
4 and their individual members will benefit from an expedited
5 alternative process for resolution of election and recall
6 disputes and presuit mediation of other disputes involving
7 covenant enforcement and authorizes the department to hear,
8 administer, and determine these disputes as more fully set
9 forth in this chapter. Further, the Legislature recognizes
10 that certain contract rights have been created for the benefit
11 of homeowners' associations and members thereof before the
12 effective date of this act and that ss. 720.301-720.501 ~~ss.~~
13 ~~720.301-720.312~~ are not intended to impair such contract
14 rights, including, but not limited to, the rights of the
15 developer to complete the community as initially contemplated.

16 Section 3. Section 720.303, Florida Statutes, is
17 amended to read:

18 720.303 Association powers and duties; meetings of
19 board; official records; budgets; financial reporting;
20 association funds; recalls.--

21 (1) POWERS AND DUTIES.--An association which operates
22 a community as defined in s. 720.301, must be operated by an
23 association that is a Florida corporation. After October 1,
24 1995, the association must be incorporated and the initial
25 governing documents must be recorded in the official records
26 of the county in which the community is located. An
27 association may operate more than one community. The officers
28 and directors of an association have a fiduciary relationship
29 to the members who are served by the association. The powers
30 and duties of an association include those set forth in this
31 chapter and, except as expressly limited or restricted in this

1 | chapter, those set forth in the governing documents. After
2 | control of the association is obtained by members ~~unit owners~~
3 | other than the developer, the association may institute,
4 | maintain, settle, or appeal actions or hearings in its name on
5 | behalf of all members concerning matters of common interest to
6 | the members, including, but not limited to, the common areas;
7 | roof or structural components of a building, or other
8 | improvements for which the association is responsible;
9 | mechanical, electrical, or plumbing elements serving an
10 | improvement or building for which the association is
11 | responsible; representations of the developer pertaining to
12 | any existing or proposed commonly used facility; and
13 | protesting ad valorem taxes on commonly used facilities. The
14 | association may defend actions in eminent domain or bring
15 | inverse condemnation actions. Before commencing litigation
16 | against any party in the name of the association involving
17 | amounts in controversy in excess of \$100,000, the association
18 | must obtain the affirmative approval of a majority of the
19 | voting interests at a meeting of the membership at which a
20 | quorum has been attained. This subsection does not limit any
21 | statutory or common-law right of any individual member or
22 | class of members to bring any action without participation by
23 | the association. A member does not have authority to act for
24 | the association by virtue of being a member. An association
25 | may have more than one class of members and may issue
26 | membership certificates. An association of 15 or fewer parcel
27 | owners may enforce only the requirements of those deed
28 | restrictions established prior to the purchase of each parcel
29 | upon an affected parcel owner or owners.

30 | (2) BOARD MEETINGS.--
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1 (a) A meeting of the board of directors of an
2 association occurs whenever a quorum of the board gathers to
3 conduct association business. All meetings of the board must
4 be open to all members except for meetings between the board
5 and its attorney with respect to proposed or pending
6 litigation where the contents of the discussion would
7 otherwise be governed by the attorney-client privilege.

8 (b) Members have the right to attend all meetings of
9 the board and to speak on any matter placed on the agenda by
10 petition of the voting interests for at least 3 minutes. The
11 association may adopt written reasonable rules expanding the
12 right of members to speak and governing the frequency,
13 duration, and other manner of member statements, which rules
14 must be consistent with this paragraph and may include a
15 sign-up sheet for members wishing to speak. Notwithstanding
16 any other law, the requirement that board meetings and
17 committee meetings be open to the members is inapplicable to
18 meetings between the board or a committee and the
19 association's attorney, with respect to meetings of the board
20 held for the purpose of discussing personnel matters.

21 (c) The bylaws shall provide for giving notice to
22 parcel owners and members of all board meetings and, if they
23 do not do so, shall be deemed to provide the following:

24 1. Notices of all board meetings must be posted in a
25 conspicuous place in the community at least 48 hours in
26 advance of a meeting, except in an emergency. In the
27 alternative, if notice is not posted in a conspicuous place in
28 the community, notice of each board meeting must be mailed or
29 delivered to each member at least 7 days before the meeting,
30 except in an emergency. Notwithstanding this general notice
31 requirement, for communities with more than 100 members, the

1 | bylaws may provide for a reasonable alternative to posting or
2 | mailing of notice for each board meeting, including
3 | publication of notice, provision of a schedule of board
4 | meetings, or the conspicuous posting and repeated broadcasting
5 | of the notice on a closed-circuit cable television system
6 | serving the homeowners' association. However, if broadcast
7 | notice is used in lieu of a notice posted physically in the
8 | community, the notice must be broadcast at least four times
9 | every broadcast hour of each day that a posted notice is
10 | otherwise required. When broadcast notice is provided, the
11 | notice and agenda must be broadcast in a manner and for a
12 | sufficient continuous length of time so as to allow an average
13 | reader to observe the notice and read and comprehend the
14 | entire content of the notice and the agenda. The bylaws or
15 | amended bylaws may provide for giving notice by electronic
16 | transmission in a manner authorized by law for meetings of the
17 | board of directors, committee meetings requiring notice under
18 | this section, and annual and special meetings of the members;
19 | however, a member must consent in writing to receiving notice
20 | by electronic transmission.

21 | 2. An assessment may not be levied at a board meeting
22 | unless the notice of the meeting includes a statement that
23 | assessments will be considered and the nature of the
24 | assessments. Written notice of any meeting at which special
25 | assessments will be considered or at which amendments to rules
26 | regarding parcel use will be considered must be mailed,
27 | delivered, or electronically transmitted to the members and
28 | parcel owners and posted conspicuously on the property or
29 | broadcast on closed-circuit cable television not less than 14
30 | days before the meeting.

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1 3. Directors may not vote by proxy or by secret ballot
2 at board meetings, except that secret ballots may be used in
3 the election of officers. This subsection also applies to the
4 meetings of any committee or other similar body, when a final
5 decision will be made regarding the expenditure of association
6 funds, and to any body vested with the power to approve or
7 disapprove architectural decisions with respect to a specific
8 parcel of residential property owned by a member of the
9 community.

10 (d) If 20 percent of the total voting interests
11 petition the board to address an item of business, the board
12 shall at its next regular board meeting or at a special
13 meeting of the board, but not later than 60 days after the
14 receipt of the petition, take the petitioned item up on an
15 agenda. The board shall give all members notice of the meeting
16 at which the petitioned item shall be addressed in accordance
17 with the 14-day notice requirement pursuant to subparagraph 2.
18 Each member shall have the right to speak for at least 3
19 minutes on each matter placed on the agenda by petition,
20 provided that the member signs the sign-up sheet, if one is
21 provided, or submits a written request to speak prior to the
22 meeting. Other than addressing the petitioned item at the
23 meeting, the board is not obligated to take any other action
24 requested by the petition.

25 (3) MINUTES.--Minutes of all meetings of the members
26 of an association and of the board of directors of an
27 association must be maintained in written form or in another
28 form that can be converted into written form within a
29 reasonable time. A vote or abstention from voting on each
30 matter voted upon for each director present at a board meeting
31 must be recorded in the minutes.

1 (4) OFFICIAL RECORDS.--The association shall maintain
2 each of the following items, when applicable, which constitute
3 the official records of the association:

4 (a) Copies of any plans, specifications, permits, and
5 warranties related to improvements constructed on the common
6 areas or other property that the association is obligated to
7 maintain, repair, or replace.

8 (b) A copy of the bylaws of the association and of
9 each amendment to the bylaws.

10 (c) A copy of the articles of incorporation of the
11 association and of each amendment thereto.

12 (d) A copy of the declaration of covenants and a copy
13 of each amendment thereto.

14 (e) A copy of the current rules of the homeowners'
15 association.

16 (f) The minutes of all meetings of the board of
17 directors and of the members, which minutes must be retained
18 for at least 7 years.

19 (g) A current roster of all members and their mailing
20 addresses and parcel identifications. The association shall
21 also maintain the electronic mailing addresses and the numbers
22 designated by members for receiving notice sent by electronic
23 transmission of those members consenting to receive notice by
24 electronic transmission. The electronic mailing addresses and
25 numbers provided by unit owners to receive notice by
26 electronic transmission shall be removed from association
27 records when consent to receive notice by electronic
28 transmission is revoked. However, the association is not
29 liable for an erroneous disclosure of the electronic mail
30 address or the number for receiving electronic transmission of
31 notices.

1 (h) All of the association's insurance policies or a
2 copy thereof, which policies must be retained for at least 7
3 years.

4 (i) A current copy of all contracts to which the
5 association is a party, including, without limitation, any
6 management agreement, lease, or other contract under which the
7 association has any obligation or responsibility. Bids
8 received by the association for work to be performed must also
9 be considered official records and must be kept for a period
10 of 1 year.

11 (j) The financial and accounting records of the
12 association, kept according to good accounting practices. All
13 financial and accounting records must be maintained for a
14 period of at least 7 years. The financial and accounting
15 records must include:

16 1. Accurate, itemized, and detailed records of all
17 receipts and expenditures.

18 2. A current account and a periodic statement of the
19 account for each member, designating the name and current
20 address of each member who is obligated to pay assessments,
21 the due date and amount of each assessment or other charge
22 against the member, the date and amount of each payment on the
23 account, and the balance due.

24 3. All tax returns, financial statements, and
25 financial reports of the association.

26 4. Any other records that identify, measure, record,
27 or communicate financial information.

28 (k) A copy of the disclosure summary described in s.
29 720.401(2).

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1 (1) All other written records of the association not
2 specifically included in the foregoing which are related to
3 the operation of the association.

4 (5) INSPECTION AND COPYING OF RECORDS.--The official
5 records shall be maintained within the state and must be open
6 to inspection and available for photocopying by members or
7 their authorized agents at reasonable times and places within
8 10 business days after receipt of a written request for
9 access. This subsection may be complied with by having a copy
10 of the official records available for inspection or copying in
11 the community. If the association has a photocopy machine
12 available where the records are maintained, it must provide
13 parcel owners with copies on request during the inspection if
14 the entire request is limited to no more than 25 pages.

15 (a) The failure of an association to provide access to
16 the records within 10 business days after receipt of a written
17 request creates a rebuttable presumption that the association
18 willfully failed to comply with this subsection.

19 (b) A member who is denied access to official records
20 is entitled to the actual damages or minimum damages for the
21 association's willful failure to comply with this subsection.
22 The minimum damages are to be \$50 per calendar day up to 10
23 days, the calculation to begin on the 11th business day after
24 receipt of the written request.

25 (c) The association may adopt reasonable written rules
26 governing the frequency, time, location, notice, records to be
27 inspected, and manner of inspections, but may not impose a
28 requirement that a parcel owner demonstrate any proper purpose
29 for the inspection, state any reason for the inspection, or
30 limit a parcel owner's right to inspect records to less than
31 one 8-hour business day per month. The association ~~and~~ may

1 impose fees to cover the costs of providing copies of the
2 official records, including, without limitation, the costs of
3 copying. The association may charge up to 50 cents per page
4 for copies made on the association's photocopier. If the
5 association does not have a photocopy machine available where
6 the records are kept, or if the records requested to be copied
7 exceed 25 pages in length, the association may have copies
8 made by an outside vendor and may charge the actual cost of
9 copying. The association shall maintain an adequate number of
10 copies of the recorded governing documents, to ensure their
11 availability to members and prospective members, ~~and may~~
12 ~~charge only its actual costs for reproducing and furnishing~~
13 ~~these documents to those persons who are entitled to receive~~
14 ~~them.~~ Notwithstanding the provisions of this paragraph, the
15 following records shall not be accessible to members or parcel
16 owners:

17 1. Any record protected by the lawyer-client privilege
18 as described in s. 90.502 and any record protected by the
19 work-product privilege, including, but not limited to, any
20 record prepared by an association attorney or prepared at the
21 attorney's express direction which reflects a mental
22 impression, conclusion, litigation strategy, or legal theory
23 of the attorney or the association and was prepared
24 exclusively for civil or criminal litigation or for
25 adversarial administrative proceedings or which was prepared
26 in anticipation of imminent civil or criminal litigation or
27 imminent adversarial administrative proceedings until the
28 conclusion of the litigation or adversarial administrative
29 proceedings.

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1 2. Information obtained by an association in
2 connection with the approval of the lease, sale, or other
3 transfer of a parcel.

4 3. Disciplinary, health, insurance, and personnel
5 records of the association's employees.

6 4. Medical records of parcel owners or community
7 residents.

8 (6) BUDGETS.--The association shall prepare an annual
9 budget. The budget must reflect the estimated revenues and
10 expenses for that year and the estimated surplus or deficit as
11 of the end of the current year. The budget must set out
12 separately all fees or charges for recreational amenities,
13 whether owned by the association, the developer, or another
14 person. The association shall provide each member with a copy
15 of the annual budget or a written notice that a copy of the
16 budget is available upon request at no charge to the member.
17 The copy must be provided to the member within the time limits
18 set forth in subsection (5).

19 (7) FINANCIAL REPORTING.--The association shall
20 prepare an annual financial report within 60 days after the
21 close of the fiscal year. The association shall, within the
22 time limits set forth in subsection (5), provide each member
23 with a copy of the annual financial report or a written notice
24 that a copy of the financial report is available upon request
25 at no charge to the member. Financial reports shall be
26 prepared as follows ~~The financial report must consist of~~
27 ~~either:~~

28 (a) An association that meets the criteria of this
29 paragraph shall prepare or cause to be prepared a complete set
30 of financial statements in accordance with generally accepted
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1 accounting principles. The financial statements shall be based
2 upon the association's total annual revenues, as follows:
3 1. An association with total annual revenues of
4 \$100,000 or more, but less than \$200,000, shall prepare
5 compiled financial statements.
6 2. An association with total annual revenues of at
7 least \$200,000, but less than \$400,000, shall prepare reviewed
8 financial statements.
9 3. An association with total annual revenues of
10 \$400,000 or more shall prepare audited financial statements.
11 ~~Financial statements presented in conformity with generally~~
12 ~~accepted accounting principles; or~~
13 ~~(b) A financial report of actual receipts and~~
14 ~~expenditures, cash basis, which report must show:~~
15 1. An association with total annual revenues of less
16 than \$100,000 shall prepare a report of cash receipts and
17 expenditures. The amount of receipts and expenditures by
18 classification; and
19 2. An association in a community of fewer than 50
20 parcels, regardless of the association's annual revenues, may
21 prepare a report of cash receipts and expenditures in lieu of
22 financial statements required by paragraph (a) unless the
23 governing documents provide otherwise. The beginning and
24 ending cash balances of the association.
25 3. A report of cash receipts and disbursement must
26 disclose the amount of receipts by accounts and receipt
27 classifications and the amount of expenses by accounts and
28 expense classifications, including, but not limited to, the
29 following, as applicable: costs for security, professional,
30 and management fees and expenses; taxes; costs for recreation
31 facilities; expenses for refuse collection and utility

1 services; expenses for lawn care; costs for building
2 maintenance and repair; insurance costs; administration and
3 salary expenses; and reserves if maintained by the
4 association.

5 (c) If 20 percent of the parcel owners petition the
6 board for a level of financial reporting higher than that
7 required by this section, the association shall duly notice
8 and hold a meeting of members within 30 days of receipt of the
9 petition for the purpose of voting on raising the level of
10 reporting for that fiscal year. Upon approval of a majority of
11 the total voting interests of the parcel owners, the
12 association shall prepare or cause to be prepared, shall amend
13 the budget or adopt a special assessment to pay for the
14 financial report regardless of any provision to the contrary
15 in the governing documents, and shall provide within 90 days
16 of the meeting or the end of the fiscal year, whichever occurs
17 later:

18 1. Compiled, reviewed, or audited financial
19 statements, if the association is otherwise required to
20 prepare a report of cash receipts and expenditures;

21 2. Reviewed or audited financial statements, if the
22 association is otherwise required to prepare compiled
23 financial statements; or

24 3. Audited financial statements if the association is
25 otherwise required to prepare reviewed financial statements.

26 (d) If approved by a majority of the voting interests
27 present at a properly called meeting of the association, an
28 association may prepare or cause to be prepared:

29 1. A report of cash receipts and expenditures in lieu
30 of a compiled, reviewed, or audited financial statement;

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1 2. A report of cash receipts and expenditures or a
2 compiled financial statement in lieu of a reviewed or audited
3 financial statement; or

4 3. A report of cash receipts and expenditures, a
5 compiled financial statement, or a reviewed financial
6 statement in lieu of an audited financial statement.

7 (8) ASSOCIATION FUNDS; COMMINGLING.--

8 (a) All association funds held by a developer shall be
9 maintained separately in the association's name. Reserve and
10 operating funds of the association shall not be commingled
11 prior to turnover except the association may jointly invest
12 reserve funds; however, such jointly invested funds must be
13 accounted for separately.

14 (b) No developer in control of a homeowners'
15 association shall commingle any association funds with his or
16 her funds or with the funds of any other homeowners'
17 association or community association.

18 (c) Association funds may not be used by a developer
19 to defend a civil or criminal action, administrative
20 proceeding, or arbitration proceeding that has been filed
21 against the developer or directors appointed to the
22 association board by the developer, even when the subject of
23 the action or proceeding concerns the operation of the
24 developer-controlled association.

25 (9) APPLICABILITY.--Sections 617.1601-617.1604 do not
26 apply to a homeowners' association in which the members have
27 the inspection and copying rights set forth in this section.

28 (10) RECALL OF DIRECTORS.--

29 (a)1. Regardless of any provision to the contrary
30 contained in the governing documents, subject to the
31 provisions of s. 720.307 regarding transition of association

1 control, any member of the board or directors may be recalled
2 and removed from office with or without cause by a majority of
3 the total voting interests.

4 2. When the governing documents, including the
5 declaration, articles of incorporation, or bylaws, provide
6 that only a specific class of members is entitled to elect a
7 board director or directors, only that class of members may
8 vote to recall those board directors so elected.

9 (b)1. Board directors may be recalled by an agreement
10 in writing or by written ballot without a membership meeting.
11 The agreement in writing or the written ballots, or a copy
12 thereof, shall be served on the association by certified mail
13 or by personal service in the manner authorized by chapter 48
14 and the Florida Rules of Civil Procedure.

15 2. The board shall duly notice and hold a meeting of
16 the board within 5 full business days after receipt of the
17 agreement in writing or written ballots. At the meeting, the
18 board shall either certify the written ballots or written
19 agreement to recall a director or directors of the board, in
20 which case such director or directors shall be recalled
21 effective immediately and shall turn over to the board within
22 5 full business days any and all records and property of the
23 association in their possession, or proceed as described in
24 paragraph (d).

25 3. When it is determined by the department pursuant to
26 binding arbitration proceedings that an initial recall effort
27 was defective, written recall agreements or written ballots
28 used in the first recall effort and not found to be defective
29 may be reused in one subsequent recall effort. However, in no
30 event is a written agreement or written ballot valid for more
31 than 120 days after it has been signed by the member.

1 4. Any rescission or revocation of a member's written
2 recall ballot or agreement must be in writing and, in order to
3 be effective, must be delivered to the association before the
4 association is served with the written recall agreements or
5 ballots.

6 5. The agreement in writing or ballot shall list at
7 least as many possible replacement directors as there are
8 directors subject to the recall, when at least a majority of
9 the board is sought to be recalled; the person executing the
10 recall instrument may vote for as many replacement candidates
11 as there are directors subject to the recall.

12 (c)1. If the declaration, articles of incorporation,
13 or bylaws specifically provide, the members may also recall
14 and remove a board director or directors by a vote taken at a
15 meeting. If so provided in the governing documents, a special
16 meeting of the members to recall a director or directors of
17 the board of administration may be called by 10 percent of the
18 voting interests giving notice of the meeting as required for
19 a meeting of members, and the notice shall state the purpose
20 of the meeting. Electronic transmission may not be used as a
21 method of giving notice of a meeting called in whole or in
22 part for this purpose.

23 2. The board shall duly notice and hold a board
24 meeting within 5 full business days after the adjournment of
25 the member meeting to recall one or more directors. At the
26 meeting, the board shall certify the recall, in which case
27 such member or members shall be recalled effective immediately
28 and shall turn over to the board within 5 full business days
29 any and all records and property of the association in their
30 possession, or shall proceed as set forth in subparagraph (d).

31

1 (d) If the board determines not to certify the written
2 agreement or written ballots to recall a director or directors
3 of the board or does not certify the recall by a vote at a
4 meeting, the board shall, within 5 full business days after
5 the meeting, file with the department a petition for binding
6 arbitration pursuant to the applicable procedures in ss.
7 718.1255 and 718.112(2)(j) and the rules adopted thereunder.
8 For the purposes of this section, the members who voted at the
9 meeting or who executed the agreement in writing shall
10 constitute one party under the petition for arbitration. If
11 the arbitrator certifies the recall as to any director or
12 directors of the board, the recall will be effective upon
13 mailing of the final order of arbitration to the association.
14 The director or directors so recalled shall deliver to the
15 board any and all records of the association in their
16 possession within 5 full business days after the effective
17 date of the recall.

18 (e) If a vacancy occurs on the board as a result of a
19 recall and less than a majority of the board directors are
20 removed, the vacancy may be filled by the affirmative vote of
21 a majority of the remaining directors, notwithstanding any
22 provision to the contrary contained in this subsection or in
23 the association documents. If vacancies occur on the board as
24 a result of a recall and a majority or more of the board
25 directors are removed, the vacancies shall be filled by
26 members voting in favor of the recall; if removal is at a
27 meeting, any vacancies shall be filled by the members at the
28 meeting. If the recall occurred by agreement in writing or by
29 written ballot, members may vote for replacement directors in
30 the same instrument in accordance with procedural rules
31

1 adopted by the division, which rules need not be consistent
2 with this subsection.

3 (f) If the board fails to duly notice and hold a board
4 meeting within 5 full business days after service of an
5 agreement in writing or within 5 full business days after the
6 adjournment of the member recall meeting, the recall shall be
7 deemed effective and the board directors so recalled shall
8 immediately turn over to the board all records and property of
9 the association.

10 (g) If a director who is removed fails to relinquish
11 his or her office or turn over records as required under this
12 section, the circuit court in the county where the association
13 maintains its principal office may, upon the petition of the
14 association, summarily order the director to relinquish his or
15 her office and turn over all association records upon
16 application of the association.

17 (h) The minutes of the board meeting at which the
18 board decides whether to certify the recall are an official
19 association record. The minutes must record the date and time
20 of the meeting, the decision of the board, and the vote count
21 taken on each board member subject to the recall. In addition,
22 when the board decides not to certify the recall, as to each
23 vote rejected, the minutes must identify the parcel number and
24 the specific reason for each such rejection.

25 (i) When the recall of more than one board director is
26 sought, the written agreement, ballot, or vote at a meeting
27 shall provide for a separate vote for each board director
28 sought to be recalled.

29 Section 4. Section 720.304, Florida Statutes, is
30 amended to read:
31

1 720.304 Right of owners to peaceably assemble; display
2 of flag; SLAPP suits prohibited.--

3 (1) All common areas and recreational facilities
4 serving any homeowners' association shall be available to
5 parcel owners in the homeowners' association served thereby
6 and their invited guests for the use intended for such common
7 areas and recreational facilities. The entity or entities
8 responsible for the operation of the common areas and
9 recreational facilities may adopt reasonable rules and
10 regulations pertaining to the use of such common areas and
11 recreational facilities. No entity or entities shall
12 unreasonably restrict any parcel owner's right to peaceably
13 assemble or right to invite public officers or candidates for
14 public office to appear and speak in common areas and
15 recreational facilities.

16 (2) Any homeowner may display one portable, removable
17 United States flag or official flag of the State of Florida in
18 a respectful manner, and on Armed Forces Day, Memorial Day,
19 Flag Day, Independence Day, and Veterans Day may display in a
20 respectful manner portable, removable official flags, not
21 larger than 4 1/2 feet by 6 feet, which represents the United
22 States Army, Navy, Air Force, Marine Corps, or Coast Guard,
23 regardless of any declaration rules or requirements dealing
24 with flags or decorations.

25 (3) Any owner prevented from exercising rights
26 guaranteed by subsection (1) or subsection (2) may bring an
27 action in the appropriate court of the county in which the
28 alleged infringement occurred, and, upon favorable
29 adjudication, the court shall enjoin the enforcement of any
30 provision contained in any homeowners' association document or
31 rule that operates to deprive the owner of such rights.

1 (4) It is the intent of the Legislature to protect the
2 right of parcel owners to exercise their rights to instruct
3 their representatives and petition for redress of grievances
4 before the various governmental entities of this state as
5 protected by the First Amendment to the United States
6 Constitution and s. 5, Art. I of the State Constitution. The
7 Legislature recognizes that "Strategic Lawsuits Against Public
8 Participation" or "SLAPP" suits, as they are typically called,
9 have occurred when members are sued by individuals, business
10 entities, or governmental entities arising out of a parcel
11 owner's appearance and presentation before a governmental
12 entity on matters related to the homeowners' association.
13 However, it is the public policy of this state that government
14 entities, business organizations, and individuals not engage
15 in SLAPP suits because such actions are inconsistent with the
16 right of parcel owners to participate in the state's
17 institutions of government. Therefore, the Legislature finds
18 and declares that prohibiting such lawsuits by governmental
19 entities, business entities, and individuals against parcel
20 owners who address matters concerning their homeowners'
21 association will preserve this fundamental state policy,
22 preserve the constitutional rights of parcel owners, and
23 assure the continuation of representative government in this
24 state. It is the intent of the Legislature that such lawsuits
25 be expeditiously disposed of by the courts.

26 (a) As used in this subsection, the term "governmental
27 entity" means the state, including the executive, legislative,
28 and judicial branches of government, the independent
29 establishments of the state, counties, municipalities,
30 districts, authorities, boards, or commissions, or any
31 agencies of these branches which are subject to chapter 286.

1 (b) A governmental entity, business organization, or
2 individual in this state may not file or cause to be filed
3 through its employees or agents any lawsuit, cause of action,
4 claim, cross-claim, or counterclaim against a parcel owner
5 without merit and solely because such parcel owner has
6 exercised the right to instruct his or her representatives or
7 the right to petition for redress of grievances before the
8 various governmental entities of this state, as protected by
9 the First Amendment to the United States Constitution and s.
10 5, Art. I of the State Constitution.

11 (c) A parcel owner sued by a governmental entity,
12 business organization, or individual in violation of this
13 section has a right to an expeditious resolution of a claim
14 that the suit is in violation of this section. A parcel owner
15 may petition the court for an order dismissing the action or
16 granting final judgment in favor of that parcel owner. The
17 petitioner may file a motion for summary judgment, together
18 with supplemental affidavits, seeking a determination that the
19 governmental entity's, business organization's, or
20 individual's lawsuit has been brought in violation of this
21 section. The governmental entity, business organization, or
22 individual shall thereafter file its response and any
23 supplemental affidavits. As soon as practicable, the court
24 shall set a hearing on the petitioner's motion, which shall be
25 held at the earliest possible time after the filing of the
26 governmental entity's, business organization's or individual's
27 response. The court may award the parcel owner sued by the
28 governmental entity, business organization, or individual
29 actual damages arising from the governmental entity's,
30 individual's, or business organization's violation of this
31 section. A court may treble the damages awarded to a

1 prevailing parcel owner and shall state the basis for the
2 treble damages award in its judgment. The court shall award
3 the prevailing party reasonable attorney's fees and costs
4 incurred in connection with a claim that an action was filed
5 in violation of this section.

6 (d) Homeowners' associations may not expend
7 association funds in prosecuting a SLAPP suit against a parcel
8 owner.

9 (5)(a) Any parcel owner may construct an access ramp
10 if a resident or occupant of the parcel has a medical
11 necessity or disability that requires a ramp for egress and
12 ingress under the following conditions:

13 1. The ramp must be as unobtrusive as possible, be
14 designed to blend in aesthetically as practicable, and be
15 reasonably sized to fit the intended use.

16 2. Plans for the ramp must be submitted in advance to
17 the homeowners' association. The association may make
18 reasonable requests to modify the design to achieve
19 architectural consistency with surrounding structures and
20 surfaces.

21 (b) The parcel owner must submit to the association an
22 affidavit from a physician attesting to the medical necessity
23 or disability of the resident or occupant of the parcel
24 requiring the access ramp. Certification used for s. 320.0848
25 shall be sufficient to meet the affidavit requirement.

26 (6) Any parcel owner may display a sign of reasonable
27 size provided by a contractor for security services within 10
28 feet of any entrance to the home.

29 Section 5. Subsection (2) of section 720.305, Florida
30 Statutes, is amended to read:
31

1 720.305 Obligations of members; remedies at law or in
2 equity; levy of fines and suspension of use rights; failure to
3 fill sufficient number of vacancies on board of directors to
4 constitute a quorum; appointment of receiver upon petition of
5 any member.--

6 (2) If the governing documents so provide, an
7 association may suspend, for a reasonable period of time, the
8 rights of a member or a member's tenants, guests, or invitees,
9 or both, to use common areas and facilities and may levy
10 reasonable fines, not to exceed \$100 per violation, against
11 any member or any tenant, guest, or invitee. A fine may be
12 levied on the basis of each day of a continuing violation,
13 with a single notice and opportunity for hearing, except that
14 no such fine shall exceed \$1,000 in the aggregate unless
15 otherwise provided in the governing documents. A fine shall
16 not become a lien against a parcel. In any action to recover a
17 fine, the prevailing party is entitled to collect its
18 reasonable attorney's fees and costs from the nonprevailing
19 party as determined by the court.

20 (a) A fine or suspension may not be imposed without
21 notice of at least 14 days to the person sought to be fined or
22 suspended and an opportunity for a hearing before a committee
23 of at least three members appointed by the board who are not
24 officers, directors, or employees of the association, or the
25 spouse, parent, child, brother, or sister of an officer,
26 director, or employee. If the committee, by majority vote,
27 does not approve a proposed fine or suspension, it may not be
28 imposed.

29 (b) The requirements of this subsection do not apply
30 to the imposition of suspensions or fines upon any member
31 because of the failure of the member to pay assessments or

1 other charges when due if such action is authorized by the
2 governing documents.

3 (c) Suspension of common-area-use rights shall not
4 impair the right of an owner or tenant of a parcel to have
5 vehicular and pedestrian ingress to and egress from the
6 parcel, including, but not limited to, the right to park.

7 Section 6. Section 720.3055, Florida Statutes, is
8 created to read:

9 720.3055 Contracts for products and services; in
10 writing; bids; exceptions.--

11 (1) All contracts as further described in this section
12 or any contract that is not to be fully performed within 1
13 year after the making thereof for the purchase, lease, or
14 renting of materials or equipment to be used by the
15 association in accomplishing its purposes under this chapter
16 or the governing documents, and all contracts for the
17 provision of services, shall be in writing. If a contract for
18 the purchase, lease, or renting of materials or equipment, or
19 for the provision of services, requires payment by the
20 association that exceeds 10 percent of the total annual budget
21 of the association, including reserves, the association must
22 obtain competitive bids for the materials, equipment, or
23 services. Nothing contained in this section shall be construed
24 to require the association to accept the lowest bid.

25 (2)(a)1. Notwithstanding the foregoing, contracts with
26 employees of the association, and contracts for attorney,
27 accountant, architect, community association manager,
28 engineering, and landscape architect services are not subject
29 to the provisions of this section.

30 2. A contract executed before October 1, 2004, and any
31 renewal thereof, is not subject to the competitive bid

1 requirements of this section. If a contract was awarded under
2 the competitive bid procedures of this section, any renewal of
3 that contract is not subject to such competitive bid
4 requirements if the contract contains a provision that allows
5 the board to cancel the contract on 30 days' notice.
6 Materials, equipment, or services provided to an association
7 under a local government franchise agreement by a franchise
8 holder are not subject to the competitive bid requirements of
9 this section. A contract with a manager, if made by a
10 competitive bid, may be made for up to 3 years. An association
11 whose declaration or bylaws provide for competitive bidding
12 for services may operate under the provisions of that
13 declaration or bylaws in lieu of this section if those
14 provisions are not less stringent than the requirements of
15 this section.

16 (b) Nothing contained in this section is intended to
17 limit the ability of an association to obtain needed products
18 and services in an emergency.

19 (c) This section does not apply if the business entity
20 with which the association desires to enter into a contract is
21 the only source of supply within the county serving the
22 association.

23 (d) Nothing contained in this section shall excuse a
24 party contracting to provide maintenance or management
25 services from compliance with s. 720.309.

26 Section 7. Present subsections (5) through (8) of
27 section 720.306, Florida Statutes, are renumbered as
28 subsections (7) through (10), respectively, present subsection
29 (7) is amended, and new subsections (5) and (6) are added to
30 that section to read:
31

1 720.306 Meetings of members; voting and election
2 procedures; amendments.--

3 (5) NOTICE OF MEETINGS.--The bylaws shall provide for
4 giving notice to members of all member meetings, and if they
5 do not do so shall be deemed to provide the following: The
6 association shall give all parcel owners and members actual
7 notice of all membership meetings, which shall be mailed,
8 delivered, or electronically transmitted to the members not
9 less than 14 days prior to the meeting. Evidence of compliance
10 with this 14-day notice shall be made by an affidavit executed
11 by the person providing the notice and filed upon execution
12 among the official records of the association. In addition to
13 mailing, delivering, or electronically transmitting the notice
14 of any meeting, the association may, by reasonable rule, adopt
15 a procedure for conspicuously posting and repeatedly
16 broadcasting the notice and the agenda on a closed-circuit
17 cable television system serving the association. When
18 broadcast notice is provided, the notice and agenda must be
19 broadcast in a manner and for a sufficient continuous length
20 of time so as to allow an average reader to observe the notice
21 and read and comprehend the entire content of the notice and
22 the agenda.

23 (6) RIGHT TO SPEAK.--Members and parcel owners have
24 the right to attend all membership meetings and to speak at
25 any meeting with reference to all items opened for discussion
26 or included on the agenda. Notwithstanding any provision to
27 the contrary in the governing documents or any rules adopted
28 by the board or by the membership, a member and a parcel owner
29 have the right to speak for at least 3 minutes on any item,
30 provided that the member or parcel owner submits a written
31 request to speak prior to the meeting. The association may

1 adopt written reasonable rules governing the frequency,
2 duration, and other manner of member and parcel owner
3 statements, which rules must be consistent with this
4 paragraph.

5 ~~(9)(7)~~ ELECTIONS.--Elections of directors must be
6 conducted in accordance with the procedures set forth in the
7 governing documents of the association. All members of the
8 association shall be eligible to serve on the board of
9 directors, and a member may nominate himself or herself as a
10 candidate for the board at a meeting where the election is to
11 be held. Except as otherwise provided in the governing
12 documents, boards of directors must be elected by a plurality
13 of the votes cast by eligible voters. Any election dispute
14 between a member and an association must be submitted to
15 mandatory binding arbitration with the division. Such
16 proceedings shall be conducted in the manner provided by s.
17 718.1255 and the procedural rules adopted by the division.

18 Section 8. Section 720.311, Florida Statutes, is
19 amended to read:

20 720.311 Dispute resolution.--

21 (1) The Legislature finds that alternative dispute
22 resolution has made progress in reducing court dockets and
23 trials and in offering a more efficient, cost-effective option
24 to litigation. The filing of any petition for mediation or
25 arbitration provided for in this section shall toll the
26 applicable statute of limitations. Any recall dispute filed
27 with the department pursuant to s. 720.303(10) shall be
28 conducted by the department in accordance with the provisions
29 of ss. 718.1255 and 718.112(2)(j) and the rules adopted by the
30 division. In addition, the department shall conduct mandatory
31 binding arbitration of election disputes between a member and

1 an association pursuant to s. 718.1255 and rules adopted by
2 the division. Neither election disputes nor recall disputes
3 are eligible for mediation; these disputes shall be arbitrated
4 by the department. At the conclusion of the proceeding, the
5 department shall charge the parties a fee in an amount
6 adequate to cover all costs and expenses incurred by the
7 department in conducting the proceeding. Initially, the
8 petitioner shall remit a filing fee of at least \$200 to the
9 department. The fees paid to the department shall become a
10 recoverable cost in the arbitration proceeding and the
11 prevailing party in an arbitration proceeding shall recover
12 its reasonable costs and attorney's fees in an amount found
13 reasonable by the arbitrator. The department shall adopt rules
14 to effectuate the purposes of this section.

15 (2)(a) Disputes between an association and a parcel
16 owner regarding use of or changes to the parcel or the common
17 areas and other covenant enforcement disputes, disputes
18 regarding amendments to the association documents, disputes
19 regarding meetings of the board and committees appointed by
20 the board, membership meetings not including election
21 meetings, and access to the official records of the
22 association shall be filed with the department for mandatory
23 mediation before the dispute is filed in court. Mediation
24 proceedings must be conducted in accordance with the
25 applicable Florida Rules of Civil Procedure, and these
26 proceedings are privileged and confidential to the same extent
27 as court-ordered mediation. An arbitrator or judge may not
28 consider any information or evidence arising from the
29 mediation proceeding except in a proceeding to impose
30 sanctions for failure to attend a mediation session. Persons
31 who are not parties to the dispute may not attend the

1 mediation conference without the consent of all parties,
2 except for counsel for the parties and a corporate
3 representative designated by the association. When mediation
4 is attended by a quorum of the board, such mediation is not a
5 board meeting for purposes of notice and participation set
6 forth in s. 720.303. The department shall conduct the
7 proceedings through the use of department mediators or refer
8 the disputes to private mediators who have been duly certified
9 by the department as provided in paragraph (c). The parties
10 shall share the costs of mediation equally, including the fee
11 charged by the mediator, if any, unless the parties agree
12 otherwise. If a department mediator is used, the department
13 may charge such fee as is necessary to pay expenses of the
14 mediation, including, but not limited to, the salary and
15 benefits of the mediator and any travel expenses incurred. The
16 petitioner shall initially file with the department upon
17 filing the disputes, a filing fee of \$200, which shall be used
18 to defray the costs of the mediation. At the conclusion of the
19 mediation, the department shall charge to the parties, to be
20 shared equally unless otherwise agreed by the parties, such
21 further fees as are necessary to fully reimburse the
22 department for all expenses incurred in the mediation.

23 (b) If mediation as described in paragraph (a) is not
24 successful in resolving all issues between the parties, the
25 parties may file the unresolved dispute in a court of
26 competent jurisdiction or elect to enter into binding or
27 nonbinding arbitration pursuant to the procedures set forth in
28 s. 718.1255 and rules adopted by the division, with the
29 arbitration proceeding to be conducted by a department
30 arbitrator or by a private arbitrator certified by the
31 department. If all parties do not agree to arbitration

1 proceedings following an unsuccessful mediation, any party may
2 file the dispute in court. A final order resulting from
3 nonbinding arbitration is final and enforceable in the courts
4 if a complaint for trial de novo is not filed in a court of
5 competent jurisdiction within 30 days after entry of the
6 order.

7 (c) The department shall develop a certification and
8 training program for private mediators and private arbitrators
9 which shall emphasize experience and expertise in the area of
10 the operation of community associations. A mediator or
11 arbitrator shall be certified by the department only if he or
12 she has attended at least 20 hours of training in mediation or
13 arbitration, as appropriate, and only if the applicant has
14 mediated or arbitrated at least 10 disputes involving
15 community associations within 5 years prior to the date of the
16 application, or has mediated or arbitrated 10 disputes in any
17 area within 5 years prior to the date of application and has
18 completed 20 hours of training in community association
19 disputes. In order to be certified by the department, any
20 mediator must also be certified by the Florida Supreme Court.
21 The department may conduct the training and certification
22 program within the department or may contract with an outside
23 vendor to perform the training or certification. The expenses
24 of operating the training and certification and training
25 program shall be paid by the moneys and filing fees generated
26 by the arbitration of recall and election disputes and by the
27 mediation of those disputes referred to in this subsection and
28 by the training fees.

29 (d) The mediation procedures provided by this
30 subsection may be used by a Florida corporation responsible
31 for the operation of a community in which the voting members

1 are parcel owners or their representatives, in which
2 membership in the corporation is not a mandatory condition of
3 parcel ownership, or which is not authorized to impose an
4 assessment that may become a lien on the parcel.

5 (3) The department shall develop an education program
6 to assist homeowners, associations, board members, and
7 managers in understanding and increasing awareness of the
8 operation of homeowners' associations pursuant to chapter 720
9 and in understanding the use of alternative dispute resolution
10 techniques in resolving disputes between parcel owners and
11 associations or between owners. Such education program may
12 include the development of pamphlets and other written
13 instructional guides, the holding of classes and meetings by
14 department employees or outside vendors, as the department
15 determines, and the creation and maintenance of a website
16 containing instructional materials. The expenses of operating
17 the education program shall be initially paid by the moneys
18 and filing fees generated by the arbitration of recall and
19 election disputes and by the mediation of those disputes
20 referred to in this subsection. ~~At any time after the filing~~
21 ~~in a court of competent jurisdiction of a complaint relating~~
22 ~~to a dispute under ss. 720.301-720.312, the court may order~~
23 ~~that the parties enter mediation or arbitration procedures.~~

24 Section 9. Section 689.26, Florida Statutes, is
25 transferred, renumbered as section 720.401, Florida Statutes,
26 and amended to read:

27 720.401 ~~689.26~~ Prospective purchasers subject to
28 association membership requirement; disclosure required;
29 covenants; assessments; contract cancellation ~~voidability~~.--

30 (1)(a) A prospective parcel owner in a community must
31 be presented a disclosure summary before executing the

1 contract for sale. The disclosure summary must be in a form
2 substantially similar to the following form:

3
4 DISCLOSURE SUMMARY
5 FOR
6 (NAME OF COMMUNITY)
7

8 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU
9 ~~WILL(WILL)~~ ~~(WILL NOT)~~ BE OBLIGATED TO BE A MEMBER OF A
10 HOMEOWNERS' ASSOCIATION.

11 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
12 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN
13 THIS COMMUNITY.

14 3. YOU ~~WILL(WILL)~~ ~~(WILL NOT)~~ BE OBLIGATED TO PAY
15 ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO
16 PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$
17 PER . YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL
18 ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL
19 ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE
20 CURRENT AMOUNT IS \$ PER .

21 4. YOU ~~MAY(WILL)~~ ~~(WILL NOT)~~ BE OBLIGATED TO PAY
22 SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR
23 SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC
24 CHANGE.

25 ~~5.4.~~ YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR
26 ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION
27 COULD RESULT IN A LIEN ON YOUR PROPERTY.

28 ~~6.5.~~ THERE ~~MAY BE(IS)~~ ~~(IS NOT)~~ AN OBLIGATION TO PAY
29 RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED
30 FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS'
31 ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$ PER

1 ~~.(If such obligation exists, then the amount of the~~
2 ~~current obligation shall be set forth.)~~

3 7.6. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
4 RESTRICTIVE COVENANTS ~~(CAN)~~ ~~(CANNOT)~~ ~~BE AMENDED~~ WITHOUT THE
5 APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE
6 ~~IF NO MANDATORY ASSOCIATION EXISTS,~~ PARCEL OWNERS.

7 8.7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM
8 ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER,
9 YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION
10 GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

11 9.8. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC
12 RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE
13 COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND
14 CAN BE OBTAINED FROM THE DEVELOPER.

15 DATE:

PURCHASER:

16

PURCHASER:

17

18 The disclosure must be supplied by the developer, or by the
19 parcel owner if the sale is by an owner that is not the
20 developer. Any contract or agreement for sale shall refer to
21 and incorporate the disclosure summary and shall include, in
22 prominent language, a statement that the potential buyer
23 should not execute the contract or agreement until they have
24 received and read the disclosure summary required by this
25 section.

26 (b) Each contract entered into for the sale of
27 property governed by covenants subject to disclosure required
28 by this section must contain in conspicuous type a clause that
29 states:

30

31

1 IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION
2 720.401 ~~689.26~~, FLORIDA STATUTES, HAS NOT BEEN
3 PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE
4 EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT
5 IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR
6 SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE
7 OF THE BUYER'S INTENTION TO CANCEL WITHIN 3
8 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR
9 PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY
10 PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS
11 NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT
12 SHALL TERMINATE AT CLOSING.

13
14 (c) If the disclosure summary is not provided to a
15 prospective purchaser before the purchaser executes a contract
16 for the sale of property governed by covenants that are
17 subject to disclosure pursuant to this section, the purchaser
18 may void the contract by delivering to the seller or the
19 seller's agent or representative written notice canceling the
20 contract within 3 days after receipt of the disclosure summary
21 or prior to closing, whichever occurs first. This right may
22 not be waived by the purchaser but terminates at closing. A
23 ~~contract that does not conform to the requirements of this~~
24 ~~subsection is voidable at the option of the purchaser prior to~~
25 ~~closing.~~

26 (2) This section does not apply to any association
27 regulated under chapter 718, chapter 719, chapter 721, or
28 chapter 723 or to a subdivider registered under chapter 498;
29 and also does not apply if disclosure regarding the
30 association is otherwise made in connection with the
31

1 requirements of chapter 718, chapter 719, chapter 721, or
2 chapter 723.

3 Section 10. Section 689.265, Florida Statutes, is
4 transferred and renumbered as section 720.3086, Florida
5 Statutes, to read:

6 720.3086 ~~689.265~~ Financial report.--In a residential
7 subdivision in which the owners of lots or parcels must pay
8 mandatory maintenance or amenity fees to the subdivision
9 developer or to the owners of the common areas, recreational
10 facilities, and other properties serving the lots or parcels,
11 the developer or owner of such areas, facilities, or
12 properties shall make public, within 60 days following the end
13 of each fiscal year, a complete financial report of the
14 actual, total receipts of mandatory maintenance or amenity
15 fees received by it, and an itemized listing of the
16 expenditures made by it from such fees, for that year. Such
17 report shall be made public by mailing it to each lot or
18 parcel owner in the subdivision, by publishing it in a
19 publication regularly distributed within the subdivision, or
20 by posting it in prominent locations in the subdivision. This
21 section does not apply to amounts paid to homeowner
22 associations pursuant to chapter 617, chapter 718, chapter
23 719, chapter 721, or chapter 723, or to amounts paid to local
24 governmental entities, including special districts.

25 Section 11. Paragraphs (g) and (h) of subsection (2)
26 of section 498.025, Florida Statutes, are amended to read:

27 498.025 Exemptions.--

28 (2) Except as provided in s. 498.022, the provisions
29 of this chapter do not apply to offers or dispositions of
30 interests in lots, parcels, or units contained in a recorded
31 subdivision plat, or resulting from the subdivision of land in

1 accordance with applicable local land development laws and
2 regulations pursuant to part II of chapter 163, including
3 lots, parcels, units, or interest vested under such part, if
4 all of the following conditions exist:

5 (g) The contract for purchase or lease contains, and
6 the subdivider complies with, the following provisions:

7 1. The purchaser must inspect the subdivided land
8 prior to the execution of the contract or lease.

9 2. The purchaser shall have an absolute right to
10 cancel the contract or lease for any reason whatsoever for a
11 period of 7 business days following the date on which the
12 contract or lease was executed by the purchaser.

13 3. In the event the purchaser elects to cancel within
14 the period provided, all funds or other property paid by the
15 purchaser shall be refunded without penalty or obligation
16 within 20 days of the receipt of the notice of cancellation by
17 the developer.

18 4. All funds or property paid by the purchaser shall
19 be put in escrow until closing has occurred and the lease or
20 deed has been recorded.

21 5. Unless otherwise timely canceled, closing shall
22 occur within 180 days of the date of execution of the contract
23 by the purchaser.

24 6. When title is conveyed, said title shall be
25 conveyed by statutory warranty deed unencumbered by any lien
26 or mortgage except for any first purchase money mortgage given
27 by the purchaser and restrictions, covenants, or easements of
28 record.

29 7. The subdivider presents to the purchaser the
30 disclosure required by s. 720.401 ~~s. 689.26~~ prior to the
31 execution of the contract or lease.

1 (h) The agreement for deed contains, and the
2 subdivider complies with, the following provisions:

3 1. The purchaser must inspect the subdivided land
4 prior to the execution of the agreement for deed.

5 2. The purchaser shall have an absolute right to
6 cancel the agreement for deed for any reason whatsoever for a
7 period of 7 business days following the date on which the
8 agreement for deed was executed by the purchaser.

9 3. If the purchaser elects to cancel within the period
10 provided, all funds or other property paid by the purchaser
11 shall be refunded without penalty or obligation within 20 days
12 after the receipt of the notice of cancellation by the
13 developer.

14 4. All funds or ~~for~~ property paid by the purchaser
15 shall be put in escrow until the agreement for deed has been
16 recorded in the county in which the subdivision is located.

17 5. Unless otherwise timely canceled, the agreement for
18 deed shall be recorded within 180 days after its execution by
19 the purchaser.

20 6. Sale of lots in the subdivision shall be restricted
21 solely to residents of the state.

22 7. The underlying mortgage or other ancillary
23 documents shall contain release provisions for the individual
24 lot purchased.

25 8. The subdivider presents to the purchaser the
26 disclosure required by s. 720.401 ~~s. 689.26~~ prior to the
27 execution of the agreement for deed.

28 Section 12. Section 720.402, Florida Statutes, is
29 created to read:

30 720.402 Publication of false and misleading
31 information.--

1 (1) Any person who, in reasonable reliance upon any
2 material statement or information that is false or misleading
3 and published by or under authority from the developer in
4 advertising and promotional materials, including, but not
5 limited to, a contract of purchaser, the declaration of
6 covenants, exhibits to a declaration of covenants, brochures,
7 and newspaper advertising, pays anything of value toward the
8 purchase of a parcel in a community located in this state has
9 a cause of action to rescind the contract or collect damages
10 from the developer for his or her loss before the closing of
11 the transaction. After the closing of the transaction, the
12 purchaser has a cause of action against the developer for
13 damages under this section from the time of closing until 1
14 year after the date upon which the last of the events
15 described in paragraphs (a) through (d) occur:
16 (a) The closing of the transaction;
17 (b) The issuance by the applicable governmental
18 authority of a certificate of occupancy or other evidence of
19 sufficient completion of construction of the purchaser's
20 residence to allow lawful occupancy of the residence by the
21 purchaser. In counties or municipalities in which certificates
22 of occupancy or other evidences of completion sufficient to
23 allow lawful occupancy are not customarily issued, for the
24 purpose of this section, evidence of lawful occupancy shall be
25 deemed to be given or issued upon the date that such lawful
26 occupancy of the residence may be allowed under prevailing
27 applicable laws, ordinances, or statutes;
28 (c) The completion by the developer of the common
29 areas and such recreational facilities, whether or not the
30 same are common areas, which the developer is obligated to
31 complete or provide under the terms of the written contract,

1 governing documents, or written agreement for purchase or
2 lease of the parcel; or

3 (d) In the event there is not a written contract or
4 agreement for sale or lease of the parcel, then the completion
5 by the developer of the common areas and such recreational
6 facilities, whether or not they are common areas, which the
7 developer would be obligated to complete under any rule of law
8 applicable to the developer's obligation.

9
10 Under no circumstances may a cause of action created or
11 recognized under this section survive for a period of more
12 than 5 years after the closing of the transaction.

13 (2) In any action for relief under this section, the
14 prevailing party may recover reasonable attorney's fees. A
15 developer may not expend association funds in the defense of
16 any suit under this section.

17 Section 13. Subsection (1) of section 34.01, Florida
18 Statutes, is amended to read:

19 34.01 Jurisdiction of county court.--

20 (1) County courts shall have original jurisdiction:

21 (a) In all misdemeanor cases not cognizable by the
22 circuit courts;

23 (b) Of all violations of municipal and county
24 ordinances; ~~and~~

25 (c) Of all actions at law in which the matter in
26 controversy does not exceed the sum of \$15,000, exclusive of
27 interest, costs, and attorney's fees, except those within the
28 exclusive jurisdiction of the circuit courts. The party
29 instituting any civil action, suit, or proceeding pursuant to
30 this paragraph where the amount in controversy is in excess of
31 \$5,000 shall pay to the clerk of the county court the filing

1 fees and service charges in the same amounts and in the same
2 manner as provided in s. 28.241; ~~and-~~

3 (d) Of disputes occurring in the homeowners'
4 associations as described in s. 720.311(2)(a), which shall be
5 concurrent with jurisdiction of the circuit courts.

6 Section 14. Paragraph (a) of subsection (1) of section
7 316.00825, Florida Statutes, is amended to read:

8 316.00825 Closing and abandonment of roads; optional
9 conveyance to homeowners' association; traffic control
10 jurisdiction.--

11 (1)(a) In addition to the authority provided in s.
12 336.12, the governing body of the county may abandon the roads
13 and rights-of-way dedicated in a recorded residential
14 subdivision plat and simultaneously convey the county's
15 interest in such roads, rights-of-way, and appurtenant
16 drainage facilities to a homeowners' association for the
17 subdivision, if the following conditions have been met:

18 1. The homeowners' association has requested the
19 abandonment and conveyance in writing for the purpose of
20 converting the subdivision to a gated neighborhood with
21 restricted public access.

22 2. No fewer than four-fifths of the owners of record
23 of property located in the subdivision have consented in
24 writing to the abandonment and simultaneous conveyance to the
25 homeowners' association.

26 3. The homeowners' association is both a corporation
27 not for profit organized and in good standing under chapter
28 617, and a "homeowners' association" as defined in s.
29 720.301(8) ~~s. 720.301(7)~~ with the power to levy and collect
30 assessments for routine and periodic major maintenance and
31

1 operation of street lighting, drainage, sidewalks, and
2 pavement in the subdivision.

3 4. The homeowners' association has entered into and
4 executed such agreements, covenants, warranties, and other
5 instruments; has provided, or has provided assurance of, such
6 funds, reserve funds, and funding sources; and has satisfied
7 such other requirements and conditions as may be established
8 or imposed by the county with respect to the ongoing
9 operation, maintenance, and repair and the periodic
10 reconstruction or replacement of the roads, drainage, street
11 lighting, and sidewalks in the subdivision after the
12 abandonment by the county.

13 Section 15. Subsection (2) of section 558.002, Florida
14 Statutes, is amended to read:

15 558.002 Definitions.--As used in this act, the term:

16 (2) "Association" has the same meaning as in s.
17 718.103(2), s. 719.103(2), s. 720.301(8) ~~s. 720.301(7)~~, or s.
18 723.025.

19 Section 16. The Division of Statutory Revision is
20 requested to designate sections 720.301-720.312, Florida
21 Statutes, as part I of chapter 720, Florida Statutes; to
22 designate sections 720.401 and 720.402, Florida Statutes, as
23 part II of chapter 720, Florida Statutes, and entitle that
24 part "DISCLOSURE PRIOR TO SALE OF RESIDENTIAL PARCELS"; and to
25 designate section 720.501, Florida Statutes, as part III of
26 chapter 720, Florida Statutes, and entitle that part "RIGHTS
27 AND OBLIGATIONS OF DEVELOPERS."

28 Section 17. This act shall take effect October 1,
29 2004.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 2984

4 The committee substitute (CS) allows any parcel owner to
5 construct an access ramp if a resident or occupant of the
6 parcel has a medical necessity or disability, attested to in
7 an affidavit from a physician, that requires a ramp for egress
8 and ingress. The ramp must be approved in advance by the
9 association and meet certain requirements. It also allows a
10 parcel owner to display a sign of reasonable size provided by
11 a contractor for security services within 10 feet of any
12 entrance to the home.

13 This CS deletes language creating a third degree felony for an
14 officer, director, or manager of an association who solicits,
15 offers to accept, or accepts any thing or service of value,
16 for which consideration has not been provided, from any person
17 providing or proposing to provide goods or services to the
18 association. It also deletes language providing that a
19 developer shall be deemed to have granted to a homeowners'
20 association an implied warranty of fitness and merchantability
21 for a specified period.

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